

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7728

Petition of New Cingular Wireless PCS, LLC,)
d/b/a AT&T Mobility ("AT&T"), for authority to)
install a wireless communications facility in)
Milton, Vermont)

Order entered: 5/6/2011

I. INTRODUCTION

In this Order, the Vermont Public Service Board ("Board") approves the petition filed by New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility ("AT&T" or the "Petitioner"), pursuant to 30 V.S.A. § 248a, and the Board's Order implementing standards and procedures under this section ("Procedures Order")¹, and grants the Petitioner a certificate of public good ("CPG") authorizing the installation of telecommunications facilities in the Town of Milton, Vermont (the "Project").

II. BACKGROUND

This case involves a petition and prefiled testimony filed by AT&T on March 15, 2011, requesting that the Board issue a CPG, pursuant to 30 V.S.A. § 248a, authorizing the construction of the facilities identified above. Pursuant to the Procedures Order, comments or requests for hearing on an application must be filed within 21 days of the date that the petition was filed with the Board.²

On March 24, 2011, Penny Gillander-Dame, an adjoining landowner, filed a letter citing concerns regarding the Project's potential impacts on water quality, air traffic, and public safety in the surrounding area.

1. *Order implementing standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a*, Order issued August 14, 2009.

2. Procedures Order at 9.

On April 5, 2011, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending that the Board issue a CPG authorizing installation of the Project without further evidence or hearings.

On April 8, 2011, the Petitioner filed a letter in response to Ms. Gillander-Dame's concerns.

On April 15, 2011, the Department filed a letter in response to Ms. Gillander-Dame's concerns.

No other comments regarding the Project have been filed with the Board within the prescribed comment period.

The Board has determined that the petition and prefiled testimony have effectively addressed the applicable substantive criteria of 30 V.S.A. § 248a. Consequently, we find that the procedure authorized by § 248a is sufficient to satisfy the public interest, and no hearings are required.

III. FINDINGS

1. The primary purpose of the Project is to improve wireless telecommunications service in the Town of Milton and the surrounding area. The Project will also increase network capacity and improve service in the area by connecting with other AT&T facilities. Exh. JP-3-6.B.1 § III.

2. The Project is proposed to be located at 586 Bear Trap Road in Milton, Vermont, on property owned by Vermont Transco, LLC. Currently located on the parcel are an electrical switching station and transmission lines for which Vermont Transco LLC received a CPG from the Board in Docket No. 6857, issued on September 16, 2003. Exh. JP-3-6.B.1 § I.

3. The Project involves the installation of a telecommunications tower with antennas, an equipment shelter, a generator, and associated operating equipment within a new fenced compound on property leased by AT&T. The Project also includes a new access road, a utility easement, and a parking/turn-around area. Exh. 8.A § II.

4. The Project facilities include a 120-foot-tall monopole tower with up to 12 antennas, each measuring approximately 4 feet high by 1 foot wide by 6 inches deep, mounted at a height of 117 feet on the tower. The equipment shelter will be approximately 12 feet by 20 feet by 9

feet high. The diesel-fueled generator will be mounted on a 4-foot by 11-foot platform within the 75-foot by 75-foot fenced compound. The Project also includes the construction of a new 16-foot-wide access road, which widens to 30 feet near the junction with Bear Trap Road, extending 227 feet from the road to the site, a 20-foot-wide utility easement along the access road, which widens to 34 feet near the junction with the road, and a 12-foot by 20-foot parking/turn-around area, transformer and bollards to be located directly north of the compound. Exh. JP-3-6.B.1 § II.

State Telecommunications Policy

[30 V.S.A. § 248a(a)]

5. The Project is consistent with the goal of directing the benefits of improved telecommunications technology to all Vermonters pursuant to 30 V.S.A. § 202c(b). The Project will improve coverage in the surrounding area and will allow interconnection with the other similar AT&T facilities comprising AT&T's Vermont network. Exh. JP-3-6.B.1 § III.

**Aesthetics, Historical Sites, Air and Water Purity,
the Natural Environment, and Public Health and Safety**

[30 V.S.A. § 248a(c)(1)]

6. The Project will not have an undue adverse effect on aesthetics, historical sites, air and water purity, the natural environment, and the public health and safety. This finding is supported by findings 7 through 28 below, which are the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1)-(8) and (9)(k).

Outstanding Resource Waters, Headwaters

[10 V.S.A. §§ 1424a(d), 6086(a)(1)(A)]

7. The Project will not impact outstanding resource waters or headwaters. Exh. JP-3-6.B.1 § IV.

Water and Air Pollution

[10 V.S.A. § 6086(a)(1)]

8. The Project will not result in undue water or air pollution. This finding is supported by findings 9 through 11, below.

9. The Project will not be located near any bodies of water and will not utilize a water supply at the site. Drilling for the tower foundation will not result in any threat to the groundwater associated with nearby water wells. Exh. JP-3-6.B.1 § IV.

10. Noise associated with construction activities will be short term, and noise from the generator will be limited in the absence of a prolonged power outage. Dust associated with construction vehicles will be controlled at the site. Exh. JP-3-6.B.1 § IV.

11. The Radio Frequency Radiation ("RFR") associated with the Project will meet all standards prescribed by the Federal Communications Commission ("FCC"). The RFR emission from the antenna installation is calculated to be 13.74% of the FCC standard for Maximum Permissible Exposure. Exhs. JP-3-6.B.1 § IV and 6.B.6.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

12. The Project does not involve disposal of wastes or injection of any material into ground water or wells. Exh. JP-3-6.B.1 § IV.

Water Conservation, Sufficiency of Water, and Burden on Existing Water Supply

[10 V.S.A. §§ 6086(a)(1)(C),(a)(2) and (3)]

13. The Project will have minimal impact on water conservation and water supplies, as the Project will not be connected to water supplies. Any water needed in connection with Project construction will be brought in from sources outside the Project site. Exh. JP-3-6.B.1 § IV.

Floodways

[10 V.S.A. § 6086(a)(1)(D)]

14. The Project is not located in a floodway. Exh. JP-3-6.B.1 § IV.

Streams

[10 V.S.A. § 6086(a)(1)(E)]

15. The Project will not be located on, adjacent to, or near any streams or other water bodies. Exh. JP-3-6.B.1 § IV.

Shorelines

[10 V.S.A. § 6086(a)(1)(F)]

16. The Project is not located on a shoreline. Exh. JP-3-6.B.1 § IV.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

17. The Project is not located near any wetlands. Exh. JP-3-6.B.1 § IV.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

18. The Project will not cause unreasonable soil erosion or a reduction in the capacity of the land to hold water. All construction work will comply with Vermont standards and specifications for erosion and sediment control. Exh. JP-3-6.B.1 § IV.

Transportation System

[10 V.S.A. § 6086(a)(5)]

19. The Project will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports or airways, and other means of transportation existing or proposed. Traffic to the unmanned site will be limited following construction. Exh. JP-3-6.B.1 § IV.

Educational Services

[10 V.S.A. § 6086(a)(6)]

20. The Project will not cause an unreasonable burden on the ability of a municipality to provide educational services. Educational services will not be impacted by the Project.

Exh. JP-3-6.B.1 § IV.

Municipal Services

[10 V.S.A. § 6086(a)(7)]

21. The Project will not place an unreasonable burden on the ability of the local government to provide municipal or governmental services. The Project will not require any additional municipal or governmental services. Exh. JP-3-6.B.1 § IV.

Aesthetics, Historical Sites, and Rare and Irreplaceable Natural Areas

[10 V.S.A. § 6086(a)(8)]

22. The Project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas. This finding is supported by findings 23 through 28, below.

23. The Petitioner has taken measures to mitigate the Project's aesthetic impact including siting the Project near an existing electrical switching station and in a densely wooded area.

Exh. JP-3-6.B.1 § IV.

24. The Project does not violate any clearly identified community standards contained in the relevant regional or town plans. Exh. JP-3-6.B.1 § IV.

25. The Project will not be shocking or offensive to the average person. Exh. JP-3-6.B.1 § IV.

26. The Project will not have an adverse impact on known historic sites. Exh. JP-3-6.B.1 § IV.

27. The Project will not have an adverse impact on irreplaceable natural areas. Exh. JP-3-6.B.1 § IV.

28. The Project will not destroy or significantly imperil endangered species or necessary wildlife habitat. Exh. JP-3-6.B.1 § IV.

Discussion

AT&T states that in the course of its environmental review, it identified the potential presence of Houghton's umbrella sedge in the vicinity of the Project. In a letter to AT&T from the Agency of Natural Resources ("ANR"), the agency requested that AT&T conduct a plant inventory for the impacted area prior to construction. In response to ANR's request, AT&T proposes that the CPG issued in this Order include a condition requiring it to perform a plant inventory in early summer to be submitted to the Board to confirm the absence of any rare, threatened, or endangered species, prior to formal commencement of construction.

We find AT&T's proposal to be reasonable and will, therefore, add the condition to the CPG.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

29. The Project will not unnecessarily or unreasonably endanger any public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to public investments.

Exh. JP-3-6.B.1 § IV.

Town and Regional Plans

[30 V.S.A. § 248a(c)(2)]

30. The Project, by improving wireless telecommunications services in the area without adversely affecting the character of the area, is consistent with both the Milton Town Plan and the Chittenden County Regional Plan. Exh. JP-3-6.B.1 §§ V-VI.

State and Local Permits

[30 V.S.A. § 248a(d)]

31. The permits encumbering the property include a wastewater System and Potable Water Supply Permit and a CPG issued by the Board in Docket No. 6857 to Vermont Transco, LLC related to the switching substation located on the parcel on which the Project site is to be located. The only relevant conditions in these permits concern avoiding construction that could interfere with the water supply to the substation control building. Exh. JP-3-6.B.1 § IV.

Discussion

In order to address any impacts on nearby groundwater supplies, AT&T proposes that the CPG issued in this Order include a condition requiring that a hydrogeologist review and submit a report to the Board concerning effects on nearby wells once the geotechnical investigation at the site is complete, and prior to commencement of any drilling or construction work.

We find that the proposed condition is reasonable and will, therefore, include the condition in the CPG.

IV. PROCEDURAL ISSUES

Pursuant to 30 V.S.A. § 248a and the Procedures Order, the Board must determine whether the application raises a significant issue with respect to the applicable criteria.³ Ms. Gillander-Dame contends that construction of the Project will result in contamination of her surface water well.⁴ Ms. Gillander-Dame argues that the Project could impact air traffic as "Mount Mansfield Heliflight makes nightly helicopter runs."⁵ Ms. Gillander-Dame is also concerned that the Project tower might collapse and fall onto a nearby electric substation or her house.⁶

In response to the concerns raised by Ms. Gillander-Dame regarding well contamination, AT&T states that it will complete a geotechnical survey of the area prior to Project construction and submit a report to the Board, demonstrating that the Project will not impact nearby wells, or explaining the measures that will be taken to avoid any identified impacts.⁷ AT&T contends that "there is no basis to conclude that the tower poses a risk to aircraft, or that a potential aircraft

3. Procedures Order at 5-6.

4. Gillander-Dame Comments at 1.

5. *Id.*

6. *Id.*

7. AT&T Response at 1-2.

collision with the tower is likely."⁸ AT&T observes that "the tower rises only 120' and the nearest airport is over five miles away."⁹ AT&T also argues that the tower and foundation design will comply with industry standards and "will be designed to virtually eliminate the risk of collapse."¹⁰ Further, AT&T contends that "Ms. Gillander-Dame's residence is located 244' from the tower, her property line is 181' from the tower, the utility easement is 200' from the tower, and the substation is further than all of these locations."¹¹

The Department states in its letter that AT&T has addressed the concerns expressed by Ms. Gillander-Dame concerning water quality, air-traffic safety, and the fall zone of the tower. The Department also notes that AT&T has not included the final tower and foundation design with the petition and requests that the Board consider requiring submission of these designs as a condition of approval.¹²

We appreciate Ms. Gillander-Dame's effort in alerting us to potential impacts associated with the proposed Project. Her comments have assisted us in ensuring that the petition has fully addressed the issues raised. After reviewing all of the submissions, we conclude that Ms. Gillander-Dame has not shown that the Project raises a significant issue with respect to the applicable criteria and that AT&T has adequately addressed the concerns she has expressed. The Petitioners have proposed reasonable measures to ensure the Project will not unduly impact the surrounding water supply. AT&T has also demonstrated that the Project will not interfere with air traffic, and that there is little risk of the Project tower collapsing and resulting in damage to surrounding residences or the nearby substation. We also conclude that a condition requiring additional information regarding the final tower and foundation design is reasonable and will add this requirement as a condition of the CPG.

8. *Id.* at 2-3.

9. *Id.*

10. *Id.* at 3-4.

11. *Id.*

12. Department Comments at 2.

V. CONCLUSION

Pursuant to 30 V.S.A. § 248a(a):

Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title.

Further, pursuant to the Procedures Order:

Unless the Board determines that an application raises a significant issue, it shall issue a final determination on an application within 90 days of its filing

Based upon all of the above evidence, the petition does not raise a significant issue with respect to the relevant substantive criteria of 30 V.S.A. § 248a, the public interest is satisfied by the procedures authorized in 30 V.S.A. § 248a, and the proposed Project will promote the general good of the State. The Board recognizes that telecommunications projects may have negative impacts on the surrounding areas. However, we recognize that the provision of statewide wireless telecommunications services is an important and laudable goal for the State, and robust and ubiquitous wireless telecommunications coverage provide substantial benefits.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the installation and operation of communications facilities at the location specified in the above findings, by New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248a(a), and a certificate of public good to that effect shall be issued in this matter.

Dated at Montpelier, Vermont, this 6th day May, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: May 6, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.